

SUPREME COURT OF INDIA

M/s Pennar Industries Ltd.

Vs.

State of A.P.

C.A.NO. OF 2009 arising out of SLP (C) No. 22684 of 2007

(Dr. Arijit Pasayat and Asok Kumar Ganguly)

09.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court granting partial stay of realization of demand raised against the appellant. Following order was passed by the High Court:

“On payment of 50% of the disputed tax within a period of six weeks from today by the petitioner, there shall be interim stay as prayed for. The amount already paid shall be given credit to.”

3. In support of the appeal, learned counsel for the appellant submitted that appellant is a sick company and therefore the High Court should not have directed payment of the amount as directed.

4. Learned counsel for the respondent-State on the other hand submitted that *A.P. Tax on Entry of Goods into Local Areas Act, 2001* (in short the `Act') clearly permits the levy. In revenue matters this Court should not interfere.

5. Principles relating to grant of stay pending disposal of the matters before the concerned forums have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.

6. The applicable principles have been set out succinctly in *Silliguri Municipality and Ors. v. Amalendu Das and Ors.*¹ and *M/s Samarias Trading Co. Pvt. Ltd. v. S. Samuel and Ors.*² and *Assistant Collector of Central Excise v. Dunlop India Ltd.*³.

7. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens' faith in the impartiality of public administration, interim relief can be given.

8. It has become an unfortunate trend to casually dispose of stay applications by referring to decisions in Siliguri Municipality and Dunlop India cases (supra) without analysing factual scenario involved in a particular case.

9. It appears that this Court by order dated 10.12.2007 passed the following order:

“Issue notice. Without prejudice to the claims involved, let the petitioner deposit a sum of Rs.60,00,000/- i.e. Rs.23,00,000/- , Rs.7,00,000/- and Rs.30,00,000/- in respect of the demands amounting to about Rs.90,00,000/-, Rs.22,00,000/- and Rs.1,06,00,000/- within a period of three months with the assessing officer. Realization of the balance shall be stayed if the deposit is made, as directed.”

10. It is not in dispute that the aforesaid amounts have been deposited. It is pointed out by learned counsel for the appellant that the writ petition has been heard and the judgments are awaited.

11. In the peculiar circumstances of the case we direct that till the disposal of the writ petition, there shall not be requirement for any further deposit. It is made clear that by giving this protection we are not expressing any opinion on the merits of the case.

12. The appeal is disposed of accordingly.

¹AIR 1984 SC 653

²AIR 1985 SC 61

³AIR 1985 SC 330